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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

FILE: B-201133.2, B-201133.3 DATE: June 22, 1981

MATTER OF: Central Intelligence Agency, National
Office Systems, Inc.--Request for
Reconsideration

DIGEST:

1. Request for reconsideration by agency of protest decision filed more than 10 working days after agency received decision is untimely even though agency's procurement division did not receive decision until 5 working days later.
2. Contention that order for supplies cannot be placed directly with authorized agent of Federal Supply Schedule contractor is denied on reconsideration since agency's delivery order was issued directly to contractor and only "in care of" contractor's authorized agent.

The Central Intelligence Agency (CIA) and National Office Systems, Inc. (National), request reconsideration of our decision in National Office Systems, Inc., B-201133, March 18, 1981, 81-1 CPD 210.

National had contended that the CIA's purchase from the Federal Supply Schedule of eight power shelving units manufactured by Kardex Systems, Inc. (Kardex), was tainted because CIA procurement officials favored the use of Kardex equipment over the White Machine Company equipment offered by National. In our prior decision, we held that the CIA's requirements for eight power files containing a self-diagnostic feature were in contravention of the Federal Property Management Regulations, which prohibit purchases made at prices other than the lowest delivered price on the basis of "mere personal preference."

The CIA

The CIA argues that the determination that eight units and a self-diagnostic feature were required was the responsibility of the procuring agency. The Agency

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asserts that National was aware that eight units were necessary, and the record does not demonstrate that National met the burden of showing that eight units were not needed. As to the requirement for the self-diagnostic feature, the CIA contends that this feature supports the Agency's need to have continuous access to the file because it identifies system operation problems that the file operator can correct and that adequate documentation was provided to this Office to establish prima facie support for contention.

The CIA's request for reconsideration is untimely and therefore dismissed.

Our Bid Protest Procedures, 4 C.F.R. § 20.9(b) (1980), require that requests for reconsideration by the agency be filed within 10 working days after the basis for reconsideration is known or should have been known.

The CIA's request for reconsideration of our prior decision of March 18, 1981, which was forwarded to the Director, CIA, by letter of that date, was received by this Office on April 10, 1981. In the request, the CIA states that since the Procurement Division of the Office of Logistics received our prior decision on March 27, 1981, its request which was hand-delivered to this Office on April 10, 1981, the tenth day after receipt by that office, is timely. However, in telephone conversations on March 31 and April 3, 1981, with attorneys in this Office, the Chief of the CIA's Procurement Division stated that our decision was received by the Agency on March 20, 1981, which we believe is the date when the basis for reconsideration was known or should have been known.

The fact that the CIA's Office of Logistics did not receive our prior decision until March 27, 1981, is of no consequence. We have held that the failure of a protester's officer with authority to bind the protester to receive actual notification of a basis for protest until 2 days after the protester's corporate headquarters was so notified did not toll the 10 working day period for submission of a timely protest with this Office. See Better Business Machines, B-191715, August 9, 1978, 78-2 CPD 107.

Timeliness standards for the filing of requests for reconsideration are even more inflexible than those for filing protests. See Department of Commerce; International Computaprint Corporation, 57 Comp. Gen. 615 (1978) 78-2 CPD 84. We see no reason then to apply a less stringent standard to an agency's request for reconsideration. Therefore, the Agency's April 10, 1981, request for reconsideration was not filed within the time limits set forth in 4 C.F.R. § 20.9(b).

National

National requests that we reconsider our decision that the CIA's award directly to Remco Business Systems, Inc. (Remco), an agent of Kardex, without any reference to Kardex was contrary to the Federal Supply Schedule procurement procedures established by the General Services Administration. In addition, National asserts that the order for the shelving units must be issued to Kardex alone, although it can be mailed or sent to any of its authorized dealers such as Remco.

In our prior decision we stated:

"National's last basis for protest is that award to Remco was improper since the Federal Supply Schedule contract was between Kardex and the General Services Administration. However, since Remco was listed as an authorized agent for Kardex under Kardex's Federal Supply Schedule contract, this issue of protest is denied."

The above denial was correctly based on the fact that the CIA issued a delivery order under this schedule for the eight Kardex power shelving units to Kardex in care of Remco. GSA has informally confirmed that award in this manner is proper. Therefore, National's contention on this point is again denied.

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Our prior decision is affirmed.


Acting Comptroller General
of the United States